

AN ACT

relating to the exemption from sales and use taxes, including the motor vehicle sales and use tax, for timber and certain items used in or on a farm, ranch, timber operation, or agricultural aircraft operation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 151, Tax Code, is amended by adding Section 151.1551 to read as follows:

Sec. 151.1551. REGISTRATION NUMBER REQUIRED FOR TIMBER AND CERTAIN AGRICULTURAL ITEMS. (a) This section applies to an exemption provided by:

(1) Sections 151.316(a)(6), (7), (8), (10), (11), and (12);

(2) Section 151.316(b) for tangible personal property used in the production of agricultural products for sale;

(3) Section 151.3162(b) for tangible personal property used in the production of timber for sale;

(4) Sections 151.317(a)(5) and (10) for electricity used in agriculture or timber operations; and

(5) Section 151.3111 for services performed on tangible personal property exempted under Section 151.316(a)(6), (7), (8), (10), (11), or (12), 151.316(b), or 151.3162(b).

(b) To claim an exemption to which this section applies, a registration number issued by the comptroller must be stated on the

1 exemption certificate provided by the purchaser of the item.

2 (c) A person is eligible to apply for a registration number
3 if the person is engaged in the production of agricultural products
4 or timber for sale or in an agricultural aircraft operation as
5 defined by 14 C.F.R. Section 137.3.

6 (d) A person who is eligible may apply to the comptroller
7 for a registration number. The application must:

8 (1) be on a form prescribed by the comptroller;

9 (2) if applicable, state the types of crops,
10 livestock, or other agricultural products that are produced for
11 sale on the farm or ranch on which the applicant will use or employ
12 the item described by Subsection (a) or state that the item will be
13 used in relation to a timber operation or an agricultural aircraft
14 operation as defined by 14 C.F.R. Section 137.3;

15 (3) as applicable, state the name and address of the
16 farm, ranch, timber operation, or other business owned or operated
17 by the applicant in relation to which the applicant will use the
18 item; and

19 (4) contain any other information required by the
20 comptroller.

21 (e) The comptroller shall develop and implement a procedure
22 by which an applicant may submit an application described by
23 Subsection (d) electronically.

24 (f) The comptroller by rule shall establish a uniform date
25 on which all registration numbers issued under this section must be
26 renewed, regardless of the date on which a registration number is
27 initially issued. The rules must require registration numbers to

1 be renewed every four years.

2 (g) The comptroller may not issue a registration number that
3 contains an individual's social security number.

4 (h) The comptroller, after written notice and a hearing, may
5 revoke the registration number issued to a person who fails to
6 comply with this chapter or with a rule adopted under this chapter.
7 A person whose registration number the comptroller proposes to
8 revoke under this section is entitled to 20 days' written notice of
9 the time and place of the hearing on the revocation. The notice
10 must state the reason the comptroller is seeking to revoke the
11 person's registration number. At the hearing the person must show
12 cause why the person's registration number should not be revoked.

13 (i) The comptroller shall give written notice of the
14 revocation of a registration number under Subsection (h) to the
15 person to whom the number was issued. The notice may be personally
16 served on the person or sent by mail to the person's address as
17 shown in the comptroller's records.

18 (j) If the comptroller revokes a person's registration
19 number under Subsection (h), the comptroller may not revive the
20 registration number unless the comptroller is satisfied that the
21 person will comply with this chapter and the rules adopted under
22 this chapter. The comptroller may prescribe the terms under which a
23 revoked registration number may be revived.

24 (k) Following the revocation of a registration number by the
25 comptroller, the person who held the registration number must, on
26 the next transaction with each seller to whom the person previously
27 issued a claim for exemption with a registration number, notify

1 that seller that the person's registration number is no longer
 2 valid. The failure of a person to notify a seller as required by
 3 this subsection is considered a failure and refusal to pay the taxes
 4 imposed by this chapter by the person required to make the
 5 notification.

6 (l) The comptroller shall develop and operate an online
 7 system to enable a seller of an item described by Subsection (a) to
 8 search and verify the validity of the registration number stated on
 9 an exemption certificate. A seller is not required to use the
 10 online system.

11 (m) An exemption certificate that states a registration
 12 number issued by the comptroller to claim an exemption to which this
 13 section applies is sufficient documentation of the seller's receipt
 14 of the certificate in good faith for purposes of Sections 151.054
 15 and 151.104.

16 (n) The comptroller by rule shall establish procedures by
 17 which a seller may accept a blanket exemption certificate with a
 18 registration number issued by the comptroller to claim exemptions
 19 to which this section applies.

20 (o) A use of an item purchased using an exemption
 21 certificate with a registration number issued under this section in
 22 a manner or for a purpose other than the manner or purpose that
 23 qualified the sale, lease, rental, or other consumption of the item
 24 for the exemption may result in the revocation of the number.

25 (p) A person eligible for a registration number who, at the
 26 time of purchasing, leasing, renting, or otherwise consuming an
 27 item for which the person may otherwise claim an exemption to which

this section applies, has not obtained a registration number from the comptroller must pay the tax on the item to the seller at the time of the transaction. The person may then apply for a registration number and, on receipt of the number, may apply to the comptroller for a refund of the tax paid, subject to the statute of limitations. The comptroller by rule shall establish procedures for processing the refund requests. Tax collected by a seller under this subsection is not tax collected in error, and Section 111.104 does not apply to a refund request submitted under this subsection.

SECTION 2. Section 151.3111(a), Tax Code, is amended to read as follows:

(a) Subject to Section 151.1551, a [A] service that is performed on tangible personal property that, if sold, leased, or rented, at the time of the performance of the service, would be exempted under this chapter because of the nature of the property, its use, or a combination of its nature and use, is exempted from this chapter.

SECTION 3. Section 151.316(a), Tax Code, as amended by Chapters 1162 (H.B. 3144) and 1373 (S.B. 958), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) Subject to Section 151.1551, the [The] following items are exempted from the taxes imposed by this chapter:

- (1) horses, mules, and work animals;
- (2) animal life the products of which ordinarily constitute food for human consumption;
- (3) feed for farm and ranch animals;

(4) feed for animals that are held for sale in the regular course of business;

(5) seeds and annual plants the products of which:

(A) ordinarily constitute food for human consumption;

(B) are to be sold in the regular course of business; or

(C) are used to produce feed for animals exempted by this section;

(6) fertilizers, fungicides, insecticides, herbicides, defoliants, and desiccants exclusively used or employed on a farm or ranch in the production of:

(A) food for human consumption;

(B) feed for animal life; or

(C) other agricultural products to be sold in the regular course of business;

(7) machinery and equipment exclusively used or employed on a farm or ranch in the building or maintaining of roads or water facilities or in the production of:

(A) food for human consumption;

(B) grass;

(C) feed for animal life; or

(D) other agricultural products to be sold in the regular course of business;

(8) machinery and equipment exclusively used in, and pollution control equipment required as a result of, the processing, packing, or marketing of agricultural products by an

1 original producer at a location operated by the original producer
2 for processing, packing, or marketing the producer's own products
3 if:

4 (A) 50 percent or more of the products processed,
5 packed, or marketed at or from the location are produced by the
6 original producer and not purchased or acquired from others; and

7 (B) the producer does not process, pack, or
8 market for consideration any agricultural products that belong to
9 other persons in an amount greater than five percent of the total
10 agricultural products processed, packed, or marketed by the
11 producer;

12 (9) ice exclusively used by commercial fishing boats
13 in the storing of aquatic species including but not limited to
14 shrimp, other crustaceans, finfish, mollusks, and other similar
15 creatures;

16 (10) tangible personal property, including a tire,
17 sold or used to be installed as a component part of a motor vehicle,
18 machinery, or other equipment exclusively used or employed on a
19 farm or ranch in the building or maintaining of roads or water
20 facilities or in the production of:

21 (A) food for human consumption;

22 (B) grass;

23 (C) feed for animal life; or

24 (D) other agricultural products to be sold in the
25 regular course of business;

26 (11) machinery and equipment exclusively used in an
27 agricultural aircraft operation, as defined by 14 C.F.R. Section

137.3; ~~and~~

(12) tangible personal property incorporated into a structure that is used for the disposal of poultry carcasses in accordance with Section 26.303, Water Code; and

(13) tangible personal property incorporated into or attached to a structure that is located on a commercial dairy farm, is used or employed exclusively for the production of milk, and is:

(A) a free-stall dairy barn; or

(B) a dairy structure used solely for maternity purposes.

SECTION 4. Section 151.316(b), Tax Code, is amended to read as follows:

(b) Subject to Section 151.1551, tangible ~~[Tangible]~~ personal property sold or used to be installed as a component of an underground irrigation system is exempt from the taxes imposed by this chapter if the system is exclusively used or employed on a farm or ranch in the production of:

(1) food for human consumption;

(2) grass;

(3) feed or forage for:

(A) animal life the products of which ordinarily constitute food for human consumption; or

(B) horses, mules, and work animals; or

(4) other agricultural products to be sold in the regular course of business.

SECTION 5. Section 151.3162(b), Tax Code, is amended to read as follows:

(b) Subject to Section 151.1551, the ~~[The]~~ following items are exempted from the tax imposed by this chapter:

(1) seedlings of trees grown for commercial timber;

(2) defoliants, desiccants, equipment, fertilizers, fungicides, herbicides, insecticides, and machinery exclusively used in the production of timber to be sold in the regular course of business;

(3) machinery and equipment used in, and pollution control equipment required as a result of, the processing, packing, or marketing of timber products by an original producer if:

(A) the processing, packing, or marketing occurs at or from a location operated by the original producer;

(B) at least 50 percent of the value of the timber products processed, packed, or marketed at or from the location is attributable to products produced by the original producer and not purchased or acquired from others; and

(C) the original producer does not process, pack, or market for consideration timber products that belong to another person with a value greater than five percent of the total value of the timber products processed, packed, or marketed by the producer; and

(4) tangible personal property sold or used to be installed as a component of an underground irrigation system exclusively used in the production of timber to be sold in the regular course of business.

SECTION 6. Section 151.317(a), Tax Code, is amended to read as follows:

(a) Subject to Section 151.1551 and Subsection (d) of this section, gas and electricity are exempted from the taxes imposed by this chapter when sold for:

(1) residential use;

(2) use in powering equipment exempt under Section 151.318 or 151.3185 by a person processing tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);

(3) use in lighting, cooling, and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);

(4) use directly in exploring for, producing, or transporting, a material extracted from the earth;

(5) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;

(6) use directly in electrical processes, such as electroplating, electrolysis, and cathodic protection;

(7) use directly in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property;

(8) use directly in providing, under contracts with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence, data processing and handling systems, or

1 defense-related platform modifications or upgrades;

2 (9) a direct or indirect use, consumption, or loss of
3 electricity by an electric utility engaged in the purchase of
4 electricity for resale; or

5 (10) use in timber operations, including pumping for
6 irrigation of timberland.

7 SECTION 7. Section 152.091, Tax Code, is amended by adding
8 Subsection (b-1) and amending Subsection (c) to read as follows:

9 (b-1) In addition to the other requirements prescribed by
10 this section, to claim an exemption provided by Subsection (a) or
11 (b) the person purchasing, using, or leasing the machine, trailer,
12 or semitrailer must provide an exemption certificate with a
13 registration number issued by the comptroller under Section
14 151.1551.

15 (c) The taxes imposed by this chapter do not apply to the
16 rental of a farm machine, a trailer, or a semitrailer for use
17 primarily for farming and ranching, including the rearing of
18 poultry, and use in feedlots, or a machine, a trailer, or a
19 semitrailer for use primarily for timber operations. The tax that
20 would have been remitted on gross rental receipts without this
21 exemption shall be deemed to have been remitted for the purpose of
22 calculating the minimum gross rental receipts imposed by Section
23 152.026. The exemption provided by this subsection applies only if
24 the owner of the motor vehicle obtains in good faith an exemption
25 certificate from the person to whom the vehicle is being rented. To
26 claim the exemption, the person renting the vehicle must also
27 provide on the certificate a registration number issued by the

1 comptroller under Section 151.1551.

2 SECTION 8. Notwithstanding Section 151.1551, Tax Code, as
3 added by this Act, a person is not required to state a registration
4 number on an exemption certificate or on a form prescribed by the
5 comptroller of public accounts to claim an exemption to which
6 Section 151.1551, Tax Code, as added by this Act, applies or an item
7 under Section 152.091, Tax Code, that is claimed before January 1,
8 2012.

9 SECTION 9. (a) Except as provided by Subsection (b) of this
10 section, the change in law made by this Act does not affect tax
11 liability accruing before January 1, 2012. That liability continues
12 in effect as if this Act had not been enacted, and the former law is
13 continued in effect for the collection of taxes due and for civil
14 and criminal enforcement of the liability for those taxes.

15 (b) Section 151.316(a)(13), Tax Code, as added by this Act,
16 does not affect tax liability accruing before the effective date of
17 this Act. That liability continues in effect as if that section had
18 not been enacted, and the former law is continued in effect for the
19 collection of taxes due and for civil and criminal enforcement of
20 the liability for those taxes.

21 SECTION 10. To the extent of any conflict, this Act prevails
22 over another Act of the 82nd Legislature, Regular Session, 2011,
23 relating to nonsubstantive additions to and corrections in enacted
24 codes.

25 SECTION 11. This Act takes effect September 1, 2011.

David Newkirk
President of the Senate

Joe Straus
Speaker of the House

I certify that H.B. No. 268 was passed by the House on April 20, 2011, by the following vote: Yeas 145, Nays 1, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 268 on May 23, 2011, by the following vote: Yeas 142, Nays 0, 2 present, not voting.

Robert Hanes
Chief Clerk of the House

I certify that H.B. No. 268 was passed by the Senate, with amendments, on May 19, 2011, by the following vote: Yeas 31, Nays 0.

Atsuy Saw
Secretary of the Senate

APPROVED: 17 JUN '11

Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:00 PM '11

Boyd R. Davis
JUN 17 2011
Secretary of State